
OLR Bill Analysis

sSB 388

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE TASK FORCE ON VICTIM PRIVACY AND THE PUBLIC'S RIGHT TO KNOW.

SUMMARY:

This bill:

1. prohibits agencies from disclosing under the Freedom of Information Act (FOIA) any agency record depicting a homicide victim who was under age 18 at the time of the crime;
2. creates a procedure allowing members of the public to (a) view adult homicide images or listen to homicide-related recordings an agency can keep confidential if disclosure would constitute an unwarranted invasion of privacy and (b) seek copies of them;
3. allows agencies to withhold from disclosure under FOIA any law enforcement audio recording of a call for assistance or communication between law enforcement personnel that relates to a homicide and includes a description of a person's impaired physical condition, if disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy;
4. narrows the exemption under FOIA for law enforcement records identifying minor witnesses; and
5. requires the Legislative Program Review and Investigations Committee to study all aspects of victim privacy and recommend legislative changes to the Government Administration and Elections and Judiciary committees by January 1, 2015.

EFFECTIVE DATE: October 1, 2014, except for the study provision, which is effective upon passage.

IMAGES OF HOMICIDE VICTIMS

Disclosure — Minor Victim

FOIA requires agencies to disclose public records unless a federal or state statute or specific exemption within FOIA provides otherwise.

The bill prohibits agencies from disclosing under FOIA any agency record depicting a homicide victim who was under age 18 at the time of the crime. Currently agencies can withhold images of any homicide victim if disclosure could constitute an unwarranted invasion of personal privacy. The bill applies to images of a body or any portion of it.

Disclosure — Adult Victim

As under current law, an agency can withhold from disclosure under FOIA a federal, state, or municipal agency record consisting of an adult homicide victim's image (a victim age 18 or older at the time of the homicide) to the extent that disclosure could reasonably be expected to be an unwarranted invasion of the victim's or his or her surviving family members' personal privacy. The bill specifies that an agency can withhold the image if it depicts the victim's body or any portion of it. It allows the agency to withhold the image based on the unwarranted invasion of personal privacy, but no longer specifies that it is the victim's or his or her surviving family members' personal privacy.

VIEWING IMAGES AND LISTENING TO RECORDINGS

The bill requires agencies to allow the public to view images of adult homicide victims and listen to the recordings described below, regardless of whether an agency could withhold them from disclosure as an unwarranted invasion of personal privacy under FOIA or the bill. Viewing and listening must take place at the agency's office or place of business during regular office or business hours, as required for other records under FOIA. On request, the bill requires an agency to provide a person with a transcript of an audio recording for a fee of no more than the cost of making the transcript.

The bill prohibits an agency from providing a copy or permitting

copying of the image or recording if the agency reasonably believes copying could be an unwarranted invasion of personal privacy. Anyone denied a copy can appeal the agency's decision to the Freedom of Information Commission (FOIC) under the bill and current law.

Denial of Request for Copies

Under the bill, an agency that receives notice of an appeal of a denial of copies of an adult homicide victim's image or homicide-related recording must make a reasonable effort to notify the next of kin of the homicide victim in an image, the caller in a recording, or such a person's legal representative. The next of kin, caller, or legal representative can intervene as a party in the appeal before the FOIC. The bill places the burden of proof on the person requesting a copy of the record to show that copying could not reasonably be expected to be an unwarranted invasion of personal privacy.

Penalty

The bill makes it a class A misdemeanor to remove, copy, or duplicate an image or recording in violation of the bill's provisions. Each distinct violation is a separate offense. By law, a class A misdemeanor is punishable by up to one year in prison, a fine of up to \$2,000, or both.

LAW ENFORCEMENT AUDIO RECORDINGS

For record requests made through May 7, 2014, current law allows law enforcement agencies to withhold portions of audio tapes or recordings in which an individual describes a homicide victim's condition. This does not apply to 911 or other calls for assistance made by a person to a law enforcement agency.

After May 7, 2014, current law will require law enforcement agencies to release these recordings upon request unless another exemption under FOIA allows the agency to withhold them.

Beginning October 1, 2014, the bill allows an agency to withhold from disclosure an audio recording:

1. of (a) a 911 or other call for assistance made by a member of the public or (b) an operative communication among law enforcement personnel;
2. that captures, conveys, or relates a person's impaired physical condition; and
3. that would constitute an unwarranted invasion of personal privacy.

RECORDS IDENTIFYING MINOR WITNESSES

The bill narrows the exemption from disclosure under FOIA for law enforcement records regarding minor witnesses of crimes by limiting it to records of witnesses to specific crimes. The specific crimes are:

1. drug sale or possession crimes or other offenses under the statutes regulating dependency-producing drugs;
2. sexual assault, prostitution, enticing a minor, or the portion of the risk of injury crime involving sexual contact; or
3. violent crimes.

The bill also specifies that a minor, currently defined as someone under age 18, must be under age 18 at the time of witnessing the crime or making a statement about it to a law enforcement agency.

This exemption allows agencies to keep these law enforcement records confidential. By law, law enforcement records may be withheld from disclosure if: (1) they were created in connection with detecting or investigating a crime and are not otherwise available to the public and (2) the agency determines that disclosure would not be in the public interest because it discloses a witness' identity.

BACKGROUND

Task Force on Victim Privacy and the Public's Right to Know

PA 13-311 created this 17-member task force to consider and make recommendations regarding the balance between victim privacy under FOIA and the public's right to know. The task force reported its

findings and recommendations to the legislature's majority and minority leadership in January 2014.

Related Bill

sSB 381 (File 425), favorably reported by the Government Administration and Elections Committee, contains similar provisions.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 27 Nay 11 (04/01/2014)